

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 119 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SARABHAI CHEMICALS PVT.LTD.

Versus

COMMISSIONER OF INCOME TAX

Appearance:

MR KC PATEL with MR B.D KARIA, Advocates for Petitioner
MR MANISH R BHATT with MR MIHIR JOSHI, Advocates
for the Respondent

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

Date of decision: 05/03/98

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The Income Tax Appellate Tribunal has referred the following question to this Court for opinion, under Section 256(1) of the Income Tax Act, 1961.

"Whether on the facts and circumstances of the case the Tribunal was justified in law in holding that guarantee commission of Rs. 23,75,000/- was not allowable as deduction as claimed for?"

As pointed out to us by the learned Counsel for both the sides, this question is squarely covered by the decision of the Supreme Court in CIT Vs. Akkamamba, reported in 227 ITR 464, in which the Supreme Court affirmed the decision of the Andhra Pradesh High Court in appeal, in which it was held that the guarantee commission paid by the assessee to the banker and the insurance company for insuring deferred payment of consideration of machinery, was an admissible deduction under Section 37 of the Income Tax Act, 1961 as it constitutes revenue expenditure. Applying the said decision, we hold that the Tribunal committed an error in holding that the guarantee commission of Rs. 23,75,000/- was not allowable as deduction as revenue expenditure. The question referred to us is therefore answered in the negative in favour of the assessee and against the Revenue. The reference stands disposed of accordingly with no order as to costs.

* /Mohandas